

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DAVID J. AUMANN,

Plaintiff,

v.

GARY HAMBLIN, EDWARD F. WALL,  
WARDEN TEGALS, MS. JAMES, MS. EDER,  
S. HOLMES, A. SETTER, MS. NAIVISE,  
FRISK, DOBBERT, JOHNSON,  
DR. LEWENDOWSKI, DR. HEINZL,  
OFFICER JANE DOE and  
OFFICER JOHN DOE,

Defendants.  
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ORDER

13-cv-478-bbc

In this proposed civil action for monetary and injunctive relief, plaintiff David Aumann, a prisoner at the Stanley Correctional Institution, contends that several defendants violated his rights under the Eighth Amendment by failing to provide him adequate treatment for his medical needs. He has paid the \$400 filing fee. Because plaintiff is a prisoner, I must screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. 1915A.

After reviewing plaintiff's complaint, I conclude that plaintiff may proceed on his claim that defendant S. Holmes failed to provide him with adequate medical care. However,

plaintiff may not proceed on claims against any other defendants. In his complaint, plaintiff alleges the following facts.

### ALLEGATIONS OF FACT

Sometime in 2012 while plaintiff David Aumann was incarcerated at the New Lisbon Correctional Institution, he developed shingles. Defendant Dr. Lewendowski gave him some pain medicine, but it worked for only one hour. On July 18, 2012, plaintiff submitted a note to defendant S. Holmes, a registered nurse, stating that he was tired and had slept only two hours in the past two days because of his “excruciating burning pain on the left side of [his] body.” Holmes did not respond to the request.

On July 20, 2012, defendant Dr. Heinzl prescribed Acyclovir and Vicodin to plaintiff and put him on cell confinement status. The cell he was moved to was warm, sometimes reaching about 90 degrees. On July 21, plaintiff submitted a health service request to defendant K. Frisk, a registered nurse, complaining that he was in great pain and that the nurses were slow to deliver his Vicodin. He also complained about the conditions of his cell confinement. (Plaintiff does not identify the conditions about which he complained.) Frisk told plaintiff to use a clean and warm compress and drink fluids. She declined to refer plaintiff to a doctor.

On July 23, plaintiff complained about pain. Defendant Nurse Holmes noted that plaintiff was complaining of constipation and shingles and that he was confined in his cell for shingles. She declined to refer him to his primary care doctor. On July 24, plaintiff

complained of pain again and asked to see a doctor. Defendant Nurse Dobbert told plaintiff to work with unit staff and security regarding the medications. On July 27, plaintiff asked for more pain medication. Defendant Dr. Lewendowski ordered hydrocodine. Plaintiff also complained that defendant Officer John Doe and defendant Officer Jane Doe refused to allow him to empty the garbage can in his cell and get pain medication in a reasonable length of time. (It is not clear to whom plaintiff complained.) Plaintiff was having to wait between five and six hours between dosages, rather than four hours as prescribed by his doctor. Plaintiff also complained the he was not being allowed to communicate with his family and that he thought he might die from the unclean condition of his cell, lack of pain medication and lack of care from staff.

Plaintiff filed complaints about his conditions of confinement with defendant Naivise, a social worker, defendant Ms. James, a unit manager and defendant Tegals, the warden. They all ignored his complaints.

## DISCUSSION

### A. Eighth Amendment Medical Care

Plaintiff contends that all defendants violated his rights under the Eighth Amendment by failing to provide him adequate medical care for his shingles. Under the Eighth Amendment, prison officials have a duty to provide medical care to those being punished by incarceration. Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996) (citing Estelle v. Gamble, 429 U.S. 97, 103 (1976)). To state an Eighth Amendment medical care claim, a prisoner

must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering when treatment is withheld, Gutierrez, 111 F.3d at 1371-73, “significantly affects an individual’s daily activities,” Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998), causes pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996) or otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825, 847 (1994).

“Deliberate indifference” means that the officials were aware that the prisoner needed medical treatment, but disregarded the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff’s claim has three elements:

- (1) Did plaintiff need medical treatment?
- (2) Did defendant know that plaintiff needed treatment?
- (3) Despite defendant’s awareness of the need, did defendant fail to take reasonable measures to provide the necessary treatment?

Plaintiff alleges that he had shingles that caused him serious pain and interfered with his ability to sleep. I can infer that his shingles were a serious medical need that required treatment. Additionally I can infer from plaintiff’s allegations that several of the named defendants knew plaintiff had shingles and needed treatment for his pain.

That leaves the question whether plaintiff's allegations suggest that defendants were deliberately indifferent to plaintiff's serious medical need. I conclude that plaintiff's allegations are sufficient to state a claim against defendant S. Holmes, a registered nurse. Plaintiff states that he told Holmes he was in excruciating pain and had not slept in nearly two days. According to plaintiff, Holmes ignored plaintiff's complaints and failed to provide him any medical care. Plaintiff was not seen by medical staff until two days later. Accordingly, plaintiff may proceed on his claim against Holmes.

However, plaintiff may not proceed against any other defendant. Starting on July 20, 2012, two days after his note to defendant Holmes, plaintiff received treatment for his shingles from two doctors and was seen by medical staff on several occasions. Defendant Dr. Heinzl saw plaintiff on July 20 and gave him a prescription for an antiviral medication and pain medication. On July 27, Dr. Lewendowski prescribed additional pain medication for plaintiff. Nothing about these interactions suggest deliberate indifference to plaintiff's medical needs. Although some unidentified nurses delayed delivery of his pain medication by one or two hours, plaintiff's allegations do not suggest that any of the named defendant nurses, with the exception of Nurse Holmes, ignored his pain deliberately. Defendant Frisk responded to plaintiff's complaints by recommending that he use a clean and warm compress and on his skin and defendant Dobbert instructed plaintiff to contact unit staff about obtaining his medication sooner. Both nurses knew plaintiff was being treated by doctors at the institution and knew he was receiving treatment for his pain. They were not required to refer plaintiff to a doctor every time he complained of pain. Plaintiff's complaint does not

contain specific allegations about any other named defendant nurses. Further, plaintiff does not allege that he was ever denied treatment for his pain for any significant period of time or that the one- or two-hour delays caused him any substantial risk of serious harm.

In sum, although plaintiff had a serious medical need, I cannot infer from plaintiff's allegations that any defendant, with the exception of defendant Holmes, consciously disregarding any substantial risk of serious risk of harm. Therefore, he may proceed on his Eighth Amendment claim only against defendant Holmes.

#### B. Conditions of Confinement

Some of plaintiff's allegations suggest that he may be attempting to bring a claim regarding unconstitutional conditions of confinement during the time he was separated because of his shingles. He alleges that his cell was warm and dirty. He states that he complained about the conditions to defendants Frisk, Officer John Doe, Officer Jane Doe, social worker Naivise, unit manager Ms. James and Warden Tegals.

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain." Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Sain v. Wood, 512 F.3d 886, 893 (7th Cir. 2008). To demonstrate that prison conditions violated the Eighth Amendment, plaintiff must allege that the conditions were sufficiently serious so that they denied him "the minimal civilized measure of life's necessities," Farmer, 511 U.S. at 834, or "exceeded contemporary bounds of decency of a mature, civilized society." Lunsford v. Bennet, 17 F.3d 1574, 1579 (7th Cir. 1994). This

means that the conditions of the cell must create a substantial risk of serious harm, Farmer, 511 U.S. at 847, or at the very least, the conditions must deprive plaintiff of some “identifiable human need such as food, warmth, or exercise.” Wilson v. Seiter, 501 U.S. 294, 304 (1991).

In addition, a plaintiff must allege that the defendants acted with deliberate indifference to a risk of serious harm to plaintiff. Lunsford, 17 F.3d at 1579. As explained above, “deliberate indifference” means that defendants knew that plaintiff faced a substantial risk of serious harm and yet disregarded that risk by failing to take reasonable measures to address it. Farmer, 511 U.S. at 847.

Plaintiff’s allegations do not permit an inference to be drawn that the conditions in his cell were so harsh or dangerous that they would give rise to a constitutional claim. As an initial matter, plaintiff does not say how long he stayed in the separation cell or how long any particular conditions persisted. Although plaintiff says the cell was warm, he does not say that the high temperature persisted for a significant period of time or that the temperature had any adverse affect on him. Additionally, although plaintiff says the cell was “unclean” he does not provide any details except that officers refused to remove his garbage on one occasion. These allegations do not suggest that the cell conditions were sufficiently severe such that they presented a substantial risk of serious harm to plaintiff or deprived him of a basic human need.

Nor do plaintiff’s allegations suggest that any defendants were aware that plaintiff suffered from a substantial risk of serious harm. Although plaintiff says he complained about

his conditions to defendants, he does not provide any details about his complaints. In particular, he does not say that he told defendants about specific conditions or told defendants that the conditions were causing him to suffer any adverse effects. Accordingly, plaintiff may not proceed on a claim regarding the conditions of his confinement.

## ORDER

IT IS ORDERED that

1. Plaintiff David Aumann is GRANTED leave to proceed on his claim that defendant S. Holmes violated his rights under the Eighth Amendment by failing to provide him adequate treatment for his medical needs.

2. Plaintiff is DENIED leave to proceed on his claims against defendants Gary Hamblin, Edward Wall, Warden Tegals, Ms. James, Ms. Eder, A. Setter, Ms. Naivise, Nurse Frisk, Nurse Dobbert, Johnson, Dr. Lewendowski, Dr. Heinzl, Officer Jane Doe and Officer John Doe. The complaint is DISMISSED as to these defendants.

3. Under an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint, supplement and this order are being sent today to the Attorney General for service on the state defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service on behalf of the state defendants.

4. For the time being, plaintiff must send defendants a copy of every paper or



document that he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 23d day of August, 2013.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge